

EXHIBIT 1

Whitfield, David

From: Juckniess, Frederick R. <RJuckniess@schiffhardin.com>
Sent: Thursday, August 15, 2013 11:17 AM
To: Whitfield, David
Cc: Curtner, Gregory L.; Wierenga, Robert J.; Kefalas, Kimberly K.; Sprovtsoff, Jessica
Subject: RE: NorthStar v. ENC

David,

As we discussed, I've consulted with our team. We are confident that Judge Maloney is acting deliberately and has chosen not to set a Rule 16 conference in the NorthStar matter, making any 26(f) conference premature. As you recall, we previously asked for consolidation of the pending Encana v. Zarembo matter for discovery purposes and NorthStar declined to agree, and the cases were not so consolidated. It is not clear to us what rationale your proposed motion to start discovery now is based on, particularly where the Rule 12 motions are fully briefed and awaiting decision. As I understood you, the reason for your request is simply that NorthStar wants to start discovery now.

As Judge Scoville explained in connection with the pending Encana v. Zarembo matter, "the very purpose of a motion under Rule 12(b)(6) 'is to enable defendants to challenge the legal sufficiency of complaints without subjecting themselves to discovery.' Yuhasz v. Brush Wellman, Inc., 341 F.3d 559, 566 (6th Cir. 2003) (quoting Rutman Wine Co. v. E&J Gallo Winery, 829 F.2d 739, 748 (9th Cir. 1987))." Your proposal would appear to run directly contrary to this settled principle. If you would like to discuss further, or provide authority, please let us know.



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From: Whitfield, David [<mailto:dwhitfield@wnj.com>]
Sent: Wednesday, August 14, 2013 12:13 PM
To: Juckniess, Frederick R.
Subject: NorthStar v. ENC

Rick,

I write to follow up on our recent phone conversation. As I told you on the phone, it is our position that discovery should commence in the case. I write to seek your agreement to meet and confer pursuant to Rule 26(f) in order to meet that end. Alternatively, I seek your client's stipulation to allow discovery to proceed.

Please contact me at your earliest convenience regarding this request. We would like a response to our request by 5:00 EST tomorrow.

Feel free to contact me with any questions regarding this request.

Best,

Dave



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